

*** NOT FOR PUBLICATION ***

NO. 26535

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

IN THE MATTER OF THE GUARDIANSHIP OF THE PERSON OF A
FEMALE MINOR CHILD, BORN AUGUST 9, 1986

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-G NO. 03-1-0015K)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the record, it appears that the December 1, 2003 motion for reconsideration of the guardianship decision extended the time for appealing the January 5, 2004 guardianship order until thirty days after entry of an order disposing of the motion. HRAP 4(a)(3); cf. Saranillio v. Silva, 78 Hawai'i 1, 7, 889 P.2d 685, 691 (1995). An order denying the motion was entered on April 16, 2004, but the order was not entered within the ninety-day maximum period prescribed by HRAP 4(a)(3) for disposing of the motion. Therefore, the December 1, 2003 motion was denied by operation of law on March 1, 2004, ninety days after the motion was filed. HRAP 4(a)(3). The denial of the motion by operation of law on March 1, 2004 triggered the thirty-day period for appealing the January 5, 2004 order. HRAP 4(a)(3). The April 19, 2004 notice of appeal was filed more than thirty days after March 1, 2004 and is an untimely appeal of the January 5, 2004 order and the denial of reconsideration thereof. Thus, we lack jurisdiction over this appeal. See HRAP 26(b); Bacon v. Karlin, 68 Hawai'i 648, 650,

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727 P.2d 1127, 1128 (1986) (The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion).

Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, October 13, 2004.